



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

REV. APLC. (MD)Nos.42 & 43 of 2016

in

SA(MD)Nos.180 and 181 of 2011

REV. APLC. (MD)No.42 of 2016

Sembukutty

: Petitioner/Review Petitioner/
Respondent/Respondent/Plaintiff

Vs.

1.Dr.M.Sivanantham

M.Poorana Anandham (died)

2.A.Senthilkumar

: Respondents/Appellants/
Appellants/ Appellants/Defendants

REV. APLC. (MD)No.43 of 2016

K.Koppammal

: Petitioner /Review Petitioner/Respondent/
Respondent/Plaintiff

Vs.

M.Poorana Anandham (died)

1.A.Senthilkumar

2.Dr.M.Sivanantham

: Respondents/Respondents/Appellants/
Appellants/Defendants

COMMON PRAYER : These two Review Applications filed under Order 47 Rule 1 of the Civil Procedure Code, against the common Judgment and Decree dated 07.02.2012 passed in two Second Appeal in S.A.(MD) Nos.180 & 181 of 2011 on the file of this Court.

Prayer in SA(MD). 180/ 2011 :

Second Appeal is filed u/s 100 of CPC to prefer this Memorandum of Grounds of Second Appeal against the judgment and decree passed in AS.No. 135/2008 dated 30.07.2010 on the file of the Sub-Court, Theni confirming the judgment and decree dated 28.04.2008 passed in OS.No. 464/2006 on the file of the District Munsif Court, Theni.

Prayer in SA(MD). 181/ 2011 :

Second Appeal is filed u/s 100 of CPC to prefer this Memorandum of Grounds of Second Appeal against the judgment and decree passed in AS.No. 88/2009 dated 30.07.2010 on the file of the



Sub-Court, Theni confirming the judgment and decree dated 28.04.2008 passed in OS.No. 195/2007 on the file of the District Munsif Court, Theni.

In both Review Applications

For Review Petitioner : Mr.A.Arumugam

For Respondents : Mr.D.Nallathambi

COMMON ORDER

These two review applications have been filed as against the judgment passed in S.A.(MD)Nos.180 and 181 of 2011, dated 07.02.2012, by the respondent in the two Second Appeals, with regard to the observations made in the last paragraph.

2.The suit in O.S.No.464 of 2006 has been filed for Permanent injunction in respect of the house site and a suit in O.S.No.195 of 2007 has been filed for Declaration and Permanent Injunction. The Courts below decreed both the suits. As against which, both the Second Appeals have been filed. This Court also dismissed both the Second Appeals in S.A.(MD)Nos.180 and 181 of 2011 by order, dated 07.02.2012.

3.While dismissing the two Second Appeals, this Court negated the contention of the defendants that Survey Nos.192/2B and 2C which are sub-divided later falls within the suit property. This Court in paragraph No.15, has found that the plaintiff's property has been properly identified by the Advocate Commissioner and boundaries also correct. Having said so, in paragraph No.16 also negated the contention of the defendants that Survey Nos.192/2B and 2C not fall within the suit properties. Having said so, in the last paragraph, this Court while dismissing the two Second Appeals, made an observation that the plaintiff in both the suits should not make any claim in respect of Survey Nos.192/2B and 2C. The above observation sought to be reviewed.

4. The learned Counsel appearing for the Review Petitioner would submit that this observation creates a serious problem and the defendants having lost the suit before all the forum and now taking advantage of the above observation, they have once again interfere with the suit property with the revenue records created later, without any notice to the both the Review Petitioners, whereas, the learned Counsel appearing for the Respondents would submit that the matter cannot be reviewed. As a matter of fact, there is no error apparent on the face of the records and hence prayed for dismissal.

5. I have perused the entire materials.



6. The plaintiff has filed a suit for permanent injunction. All the Courts upheld the title of the plaintiff. The suit properties are vacant site and this Court while dismissing these two Second Appeals and made an observation. The Advocate Commissioner visited the suit property and also held that the contention of the defendants that they have also purchased the property under Exs.B.1 to B.3. Therefore, their properties fall within the suit property and such contention is rejected. Now having held in paragraph No.17, this Court has made an observation that the plaintiff in both suits shall not make any claim in respect of Survey Nos.192/2B and 2C. The contention of the defendants that Survey Nos.192/2B and 2C belongs to him which falls within the suit properties also rejected by the Court.

7. Such being the position, the observation made by this Court in the last paragraph that the plaintiff should not make any claim with regard to Survey Nos.192 / 2B and 2C is the error apparent on the face of the record without any material. Therefore, such order will certainly defeat the very decree and judgment of all the Courts. In view of the same, the said observation is deleted and the judgment is reviewed. It is also made clear that the plaintiff's property has been identified as per the Advocate Commissioner's report. The defendants property also said to have been purchased in Survey Nos.192/2B or 2C. Though earlier sub-divisions are made, with reference to the boundaries, both sides are entitled to file a fresh application for sub-division of the properties afresh and the Revenue Authorities shall pass a fresh sub- division order, based on the title documents.

8. With the above direction and observation, these two Review Applications stand disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Theni.

2.The District Munsif,
Theni.



3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to Mr.K.APPADURAI, Advocate SR-5691,5690

+2 CC to M/s.AJMAL ASSOCIATES, Advocate SR-5789,5790

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-5770[F] dated 12/02/2020)

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MK (10.03.2020) 4P 8C